

FILED

December 10, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40871
Conference Calendar

JOSE ERIC SILVA,

Petitioner-Appellant,

versus

CONSTANCE REESE, Warden,

Respondent-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:03-CV-263

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Jose Eric Silva, federal prisoner # 20105-148, appeals the district court's dismissal without prejudice of his 28 U.S.C. § 2241 habeas petition for failure to exhaust his administrative remedies. The district court construed his petition as a civil rights action because Silva is challenging the conditions of his confinement. See Carson v. Johnson, 112 F.3d 818, 820 (5th Cir. 1997).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

As the district court correctly held, whether Silva's petition is construed as a habeas petition or a civil rights action, he was required to exhaust his prison administrative remedies prior to seeking relief in the federal court, and the record reflects that he failed to do so. See Rourke v. Thompson, 11 F.3d 47, 49 & n.6 (5th Cir. 1993).

On appeal, Silva has not addressed the district court's dismissal of his petition for failure to exhaust. Because Silva has failed to contest the district court's conclusion that he has failed to exhaust administrative remedies, any challenge to such conclusion is abandoned. See Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987); Yohey v. Collins, 985 F.2d 222, 224-25 (5th Cir. 1993); FED. R. APP. P. 28(a)(9). The dismissal of his petition without prejudice is AFFIRMED.